



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

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900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable M. Kirkland Cox
Member, House of Delegates
1309 Appomattox Drive
Colonial Heights, Virginia 23834

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the General Assembly may regulate the placement of satellite antenna dishes or authorize a locality to regulate such placement through local land use ordinances.

Response

It is my opinion that the regulations of the Federal Communications Commission preempt direct or indirect regulation of the placement of satellite antenna dishes by the General Assembly or a locality, unless such regulations have a reasonable and clearly defined health, safety, or aesthetic objective. Such regulations also may not impose unreasonable limitations on, or prevent, reception of satellite delivered signals by receive-only antennas or impose costs on the users of such antennas that are excessive in light of the purchase and installation cost of the equipment.

Background

You advise that a local neighborhood association has complained about the placement of satellite antenna dishes. The dishes are mounted on metal poles, permanently attached to the ground, and mounted on private property at the edge of the public right of way. The association reports that such satellite antenna dishes placed at the property line are unsightly and could be dangerous since they may impede the vision of vehicle operators.

Applicable Law and Discussion

The overriding goal of statutory interpretation is to discern and give effect to legislative intent.¹ "The power of an administrative agency to administer a congressionally created ... program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress."² If Congress explicitly has left a gap for the agency to fill, there is an express delegation of

¹See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); *Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 678-79, 222 S.E.2d 793, 797 (1976); 1990 Op. Va. Att'y Gen. 155, 155 and opinions cited therein.

²*Morton v. Ruiz*, 415 U.S. 199, 231 (1974).

authority to the agency to elucidate a specific provision of the statute by regulation.³ Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.⁴

Section 25.104 of the applicable Federal Communications Commission regulations provides, in part, that:

(a) Any state or local zoning, land-use, building, or similar regulation that materially limits transmission or reception by satellite earth station antennas, or imposes more than minimal costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable, except that non-federal regulation of radio frequency emissions is not preempted by this section. For purposes of this paragraph (a), reasonable means that the local regulation:

(1) Has a clearly defined health, safety, or aesthetic objective that is stated in the text of the regulation itself; and

(2) Furthers the stated health, safety or aesthetic objective without unnecessarily burdening the federal interests in ensuring access to satellite services and in promoting fair and effective competition among competing communications service providers.

A federal law or regulation preempts or supplants a conflicting state law by virtue of the supremacy clause of the Constitution of the United States.⁵ The preemption of state law by federal law may occur by express regulatory language or other clear indication that Congress intends to legislate exclusively in the area.⁶ Even if Congress does not intend the enactment of a federal statutory scheme to preempt state law in the area, congressional enactments in the same field override state laws with which they conflict.⁷

The clear and unambiguous language used in § 25.104(a) of the Federal Communications Commission regulations clearly and expressly preempts the General Assembly and localities within the Commonwealth from regulating the placement of satellite antenna dishes. Consequently, unless such regulation falls within the two exceptions contained in § 25.104(a)(1)-(2), the General Assembly or a locality may not directly or indirectly regulate the placement of satellite antenna dishes.

Conclusion

Accordingly, it is my opinion that the regulations of the Federal Communications Commission preempt direct or indirect regulation of the placement of satellite antenna dishes by the General Assembly or a locality, unless such regulations have a reasonable and clearly defined health, safety, or aesthetic objective. Such regulations also may not impose unreasonable limitations on, or prevent, reception of

³ See *id.*

⁴ See, e.g., *United States v. Morton*, 467 U.S. 822, 834 (1984); *Schweiker v. Gray Panthers*, 453 U.S. 34, 44 (1981); *Batterton v. Francis*, 432 U.S. 416, 424-26 (1977); *AT&T v. United States*, 299 U.S. 232, 235-37 (1936).

⁵ *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210-11 (1824).

⁶ See *Op. Va. Att'y Gen.*: 1984-1985 at 280, 282; 1973-1974 at 284, 285.

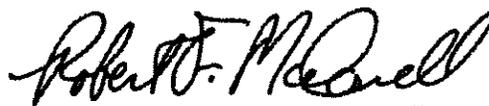
⁷ See *Jones v. Rath Packing Co.*, 430 U.S. 519, 525-26 (1977).

The Honorable M. Kirkland Cox
August 11, 2006
Page 3

satellite delivered signals by receive-only antennas or impose costs on the users of such antennas that are excessive in light of the purchase and installation cost of the equipment.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent "R" and "M".

Robert F. McDonnell

2:213; 1:941/06-045